

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2015045703001**

TO: Department of Enforcement  
Financial Industry Regulatory Authority ("FINRA")

RE: LPL Financial LLC, Respondent  
CRD No. 6413

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, LPL Financial LLC ("LPL" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against LPL alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

- A. LPL hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

LPL, a wholly-owned subsidiary of LPL Financial Holdings Inc. ("LPL Holdings"), has been a member of FINRA since 1973. The Firm is headquartered in Boston, Massachusetts and conducts a general securities business. As of June 30, 2017, LPL had nearly 18,000 registered representatives in over 10,000 branches, with net capital of \$153.6 million. In addition, as of June 30, 2017, LPL Holdings had \$542 billion in brokerage and advisory assets and annual revenues near \$4 billion.

**RELEVANT DISCIPLINARY HISTORY**

In May 2015, LPL, without admitting or denying the findings, executed an AWC (No. 2013035109701) in which it consented to a censure, a fine of \$10 million, restitution of \$1,664,592.05 and findings that, beginning in 2007, it suffered from multiple supervisory failings and other deficiencies, including books and records issues that resulted in, among others, violations of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder, NASD Rule 3110, and FINRA Rule 4511.

In December 2012, without admitting or denying the findings, LPL was censured and fined \$400,000 pursuant to an AWC (No. 2011029101501) finding that the Firm had

failed to establish and maintain an adequate supervisory system and written procedures reasonably designed to ensure timely delivery of mutual fund prospectuses, as required under Section 5(b)(2) of the Securities Act of 1933, and thus violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

### **OVERVIEW**

From January 2010 through at least December 2016 (the “Relevant Period”), LPL failed to reasonably supervise the sale of certain brokered certificates of deposit (“Brokered CDs”), which the firm characterized as non-security CDs because they were FDIC insured instruments. In particular, the Firm failed to ensure that (1) its registered representatives were trained on all material risks and features of Brokered CDs and (2) the Firm adequately disclosed all material risks and features of Brokered CDs to customers. By virtue of the foregoing, LPL violated NASD Rule 3010(a), and FINRA Rules 3110(a) and 2010.

### **FACTS AND VIOLATIVE CONDUCT**

FINRA Rule 3110(a) (formerly NASD Rule 3010(a))<sup>1</sup> requires firms to “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations,” and with applicable NASD and FINRA rules. FINRA Rule 2010 (formerly NASD Rule 2110) requires that in all aspects of its business member firms “shall observe high standards of commercial honor and just and equitable principals of trade.”

The Brokered CDs had features such as a step up, callable, floater or any combination thereof, and included CDs with complicated, multi-reference, variable rates, that may expose purchasers to a variety of risks, including equity market volatility. From 2010-2016, LPL sold \$533 million worth of the Brokered CDs in nearly 8,000 transactions, generating over \$1.6 million in Firm revenues.

During the Relevant Period, LPL failed to implement a supervisory system reasonably designed to ensure that (1) its registered representatives were trained on all of the material risks and features of the Brokered CDs and (2) the Firm adequately disclosed all material risks and features of the Brokered CDs to customers.

In particular, the Firm failed to take reasonable steps to ensure that its registered representatives or fixed income desk employees received or had meaningful access to issuer-prepared disclosure documents prior to their sales of these products. The Firm also did not train its employees on the specific material risks and features of these products. In response to Notice to Members 02-69, LPL prepared and delivered to customers who purchased Brokered CDs a generic CD Disclosure Statement that described the general risks and characteristics of Brokered CDs. LPL, however, did not consistently provide its

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<sup>1</sup> FINRA Rule 3110 replaced NASD Rule 3010, effective December 1, 2014.

customers, prior to or at the time of sale, with issuer-prepared disclosure documents, despite the Firm's obligation to do so under its selling agreements with the Brokered CD issuers, and did not otherwise have a process to fully disclose all material risks and features of the Brokered CDs to customers.

As a result of the Firm's deficient supervisory system, one of the Firm's registered representatives made material misrepresentations to five elderly customers regarding the limitations on the ability, upon death, of their estates to redeem their 20-year Brokered CDs at par value. The five elderly customers or their estates suffered losses of approximately \$75,000 because they were unable to fully redeem the Brokered CDs and had to sell the Brokered CDs in the secondary market. The Firm subsequently remediated these customers' losses.

By virtue of the foregoing, LPL violated NASD Rule 3010(a), and FINRA Rules 3110(a) and 2010.

B. LPL also consents to the imposition of the following sanctions:

- Censure; and
- \$375,000 fine.

LPL agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. LPL has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

LPL specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

## II.

### WAIVER OF PROCEDURAL RIGHTS

LPL specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, LPL specifically and voluntarily waives any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

LPL further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

LPL understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against LPL; and
- C. If accepted:
1. this AWC will become part of LPL's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
  2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
  3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
  4. LPL may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. LPL may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is

inconsistent with any part of this AWC. Nothing in this provision affects LPL's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. LPL may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. LPL understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

1/16/18  
Date (mm/dd/yyyy)

*J. Calder*  
Respondent

LPL Financial LLC

By: TRACY E. CALDER  
Managing Director  
Deputy Chief Legal & Risk Officer

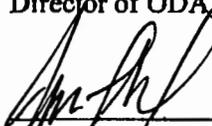
Reviewed by:

*Herb F. Janick III*  
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85 Exchange Street  
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(207) 780-8270

Accepted by FINRA:

2/6/18  
Date

Signed on behalf of the  
Director of ODA, by delegated authority



James E. Day  
Vice President and Chief Counsel  
FINRA Department of Enforcement  
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